

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALAN BROWN

Plaintiff

v.

STATE STREET CORPORATION

and STATE STREET GLOBAL

ADVISORS,

Defendants

C.A. No. 05-11178-NG

**PLAINTIFF'S MOTION TO RESCHEDULE HEARING
ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

The plaintiff requests that this Court reschedule the hearing on the parties' cross motions for summary judgment, scheduled for December 7, 2006. As grounds for this motion plaintiff's counsel states that he is presently representing two detainees at Guantanamo Bay, Cuba in *Naif Abdulla al Nakheelan, et. al. v. George W. Bush, et. al.*, C.A. No. 05-02201, in the United States District Court for the District of Columbia. Counsel has been attempting for several months to schedule a visit to Guantanamo Bay to consult with his clients regarding their cases and recent legislation that impacts those cases. Scheduling such visits is difficult. The dates on which visits are allowed and the number of counsel permitted to visit clients at the naval base at Guantanamo Bay at any time are closely limited by the military. The next date made available by the Department of Defense for present counsel to visit there is the week of December 4-8, 2006. No other date was made available for several months after that. Counsel believes it is critical to

meet with his clients as soon as possible and that delaying this visit for four or more months could cause serious harm.

Plaintiff refers to the attached affidavit of Harvey A. Schwartz in support of this motion.

Therefore, counsel for the plaintiff Alan Brown requests that this Court reschedule the hearing on the parties' cross motions for summary judgment. That hearing is presently scheduled for December 7, 2006. Counsel requests that the hearing be held the week prior or the week following that date, or any other date at the Court's convenience.

Alan Brown, plaintiff
By his attorneys,

/s/ Harvey A. Schwartz
HARVEY A. SCHWARTZ
BBO. # 448080
Rodgers, Powers & Schwartz
18 Tremont Street
Boston, MA 02108
(617) 742-7010

Assented to by:

State Street Corporation and Street Global Advisors,
Defendants,
By their attorneys,

/s/ Rex Lee
PETER CALAMARI (*pro hac vice*)
REX LEE (*pro hac vice*)
Quinn Emanuel Urquhart Oliver & Hedges LLP
335 Madison Avenue, 17th Floor
New York, NY 10017
(212) 702 8100

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AFFIDAVIT OF HARVEY A. SCHWARTZ

Now comes Harvey A. Schwartz, who states as follows subject to the pains and penalties of perjury.

1. My name is Harvey A. Schwartz. I am counsel of record for the plaintiff, Alan Brown, in the present action against State Street Corporation and State Street Global Advisors.
2. I am the only attorney in my firm involved in this case and familiar with the issues regarding summary judgment.
3. The parties have each filed motions for summary judgment. Oppositions to these motions are due to be filed by October 31, 2006.
4. A hearing on these motions is scheduled for December 7, 2006.
5. This is a serious case involving millions of dollars. All parties have requested a hearing on the summary judgment motions.
6. I represent two men from Saudi Arabia who are detained at the naval station at Guantanamo Bay, Cuba. I am counsel of record for them in a habeas corpus action in the United States District Court for the District of Columbia, *Naif Abdulla al Nakheelan, et. al. v. George W. Bush, et. al.*, C.A. No. 05-02201.
7. For the past two months I have been attempting to schedule a visit to Guantanamo Bay to meet with my clients. All such visits must be arranged

through both the Department of Justice and the Department of Defense. The DOD limits the number of counsel representing detainees at the naval station at any given time. In addition, the DOJ places restrictions on the scheduling of visits to the base. Further, the number of seats for civilians on flights to the naval station is quite restricted.

8. As a result, obtaining permission to visit a client at Guantanamo Bay is a difficult and time-consuming process.
9. I was just given permission to visit the week of December 4-8, 2006, the earliest available date. My office was informed that no other dates would be available for several months after that week.
10. Visits to Guantanamo require a commitment of four to five days, including travel.
11. In my opinion, it is vital to my clients' cases that I meet with them as soon as possible concerning their cases and to discuss recent federal legislation that impacts their cases. I believe that it would not be in my clients' best interests to postpone this meeting for the additional several months that missing this December date would compel. I believe that certain actions may be taken in regard to my clients in the interim.
12. I am available for the summary judgment hearing, at the Court's convenience, any time the week prior to December 7 or at any other date in December other than the week of December 4-8.

I have read the above and state, subject to the pains and penalties of perjury, that it is true and accurate.

Date: October 25, 2006

/s/ Harvey A. Schwartz
HARVEY A. SCHWARTZ
BBO. # 448080
Rodgers, Powers & Schwartz
18 Tremont Street
Boston, MA 02108

(617) 742-7010